

December 11, 2009

Page 1

UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY  
Civil Action No. 08-5579

RECEIVED

JAN 23 2010

JOHN W. BISSELL  
U.S. Magistrate Judge

\_\_\_\_\_  
In Regard to the Matter of:

Bayside State Prison  
Litigation

OPINION/REPORT  
OF THE  
SPECIAL MASTER

LAURENCE ISOM

-vs-

WILLIAM H. FAUVER, et al,  
Defendants.

\* \* \* \*

FRIDAY, DECEMBER 11, 2009

\* \* \* \*

BEFORE THE HONORABLE JOHN W. BISSELL, SPECIAL MASTER



December 11, 2009

Page 2

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4  
5 Transcript of proceedings in the above  
6 matter taken by Theresa O. Mastroianni, Certified  
7 Court Reporter, license number 30X100085700, and  
8 Notary Public of the State of New Jersey at the  
9 United States District Court House, One Gerry Plaza,  
10 Camden, New Jersey, 08102, commencing at 12:25 PM.  
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December 11, 2009

Page 3

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December 11, 2009

Page 4

1 JUDGE BISSELL: I am reopening  
2 proceedings in the action brought by Laurence Isom,  
3 docket number 08-5579.

4 This opinion/report is being issued  
5 pursuant to the directives of the Order of Reference  
6 to a Special Master and the Special Master's  
7 Agreement and the guiding principles of law which  
8 underlie this decision to be applied to the facts  
9 upon which it is based as set forth in the jury  
10 instructions in the Walker and Mejias jury charges to  
11 the extent applicable to the allegations of Mr.  
12 Isom.

13 As finalized after review under Local  
14 Civil Rule 52.1, this transcript will constitute the  
15 written report required under paragraph seven of the  
16 Order of Reference to a Special Master.

17 Mr. Isom was housed in F Unit at  
18 Bayside State Prison on July 30th, 1997. F Unit was  
19 the unit to which Officer Baker was assigned. He was  
20 stabbed in the interior of F Unit, staggered out the  
21 door, fell outside the unit and eventually succumbed  
22 to his injuries.

23 Mr. Isom testified that he was  
24 assaulted in various particulars on occasions  
25 beginning with the extraction of the occupants of F



December 11, 2009

Page 5

1 Unit to the gymnasium for the search of F Unit.

2 He described that while sitting in the  
3 gym, he switched positions at which point the SOG  
4 took him to the back of the gym, to the cage area  
5 which, as we have come to learn, houses exercise or  
6 weight equipment. And Mr. Isom also testified to  
7 that.

8 He then testifies at page 16 of his  
9 testimony on November 20th, 2008, to the following  
10 beginning at line seven.

11 "Question: Okay. And you said they  
12 sicced the dogs on you. Just tell us what happened?  
13 What do the dogs do, for example? What happened with  
14 you?

15 "Answer: Just snapped at my face and  
16 scratched my legs with his paws. They didn't let him  
17 get close enough to actually bite me, but close  
18 enough that I would move back and then I would get  
19 pushed forward every time I tried to get away from  
20 the dog. The dog was --

21 "Question: I'm sorry?

22 "Answer: The dog was still coming with  
23 his paws, scratching my legs.

24 "Question: But you did not get bitten?

25 "Answer: No, I didn't get bit.



December 11, 2009

Page 6

1 He then adds a curious statement  
2 gratuitously in his testimony beginning at page 31  
3 going from lines 20 to 25.

4 "The witness: If I may, Mr. Loughry,  
5 and if I may, Judge Bissell, I've come to understand  
6 through the Abu Ghraib incident that when a dog is  
7 taken by its handler and forced upon you in any sort  
8 of way, under the Geneva Convention, it's considered  
9 torture."

10 In the first place, I find that his  
11 description of the dog's activities upon him at the  
12 back of the gym is, to be charitable, inaccurate.  
13 There has been testimony throughout these proceedings  
14 by the handlers of these dogs and the manner in which  
15 they were handled. They are trained to attack only  
16 on command, they are trained in the course of an  
17 attack to bite the object of their attack and to  
18 latch on and not let go as a means, frankly, of  
19 apprehending the person involved or neutralizing him  
20 if there is an element of danger posed by that  
21 person. Otherwise, they are kept on leash and  
22 restrained.

23 I find that under no circumstances did  
24 Mr. Isom testify accurately that the dogs were  
25 allowed to scratch his legs while at the back of the



December 11, 2009

Page 7

1 gym. They may have been there, the dog may have  
2 barked close to him as a means, once again, of  
3 intimidation and control of this inmate. But there  
4 was no physical contact with him.

5 And with that reference to Abu Ghraib,  
6 it would appear that Mr. Isom exposed his motive for  
7 this testimony. Namely, that with that reminder,  
8 this Special Master might conclude that the  
9 employment of this dog, whether for intimidation or  
10 with the scratching that ensued upon him, was an act  
11 of torture and hence the imposition of cruel and  
12 unusual punishment which is the gravamen of this  
13 case. I find, however, that the testimony is untrue  
14 and that conclusion is only enforced by the  
15 motivation demonstrated by Mr. Isom's Abu Ghraib  
16 comment.

17 He testified to a second allegation of  
18 assault after the events of his extraction, march to  
19 the gym, stay in the gym and return, during which  
20 there were no other allegations of assault in that  
21 time frame. The question begins at page 16, line 24  
22 as follows:

23 "Question: And now I want to go  
24 forward in time another day or two. Did there come a  
25 point when some SOG officer or officers came into



December 11, 2009

Page 8

1 your cell in F Unit and had some interaction with  
2 you?

3 "Answer: That's correct.

4 "Question: What --

5 "Answer: I was shackled to my bunk.

6 "Question: Now, what happened at that  
7 time? First of all, how many officers or officer  
8 came into your cell? One or two or three, how many?

9 "Answer: Three were outside of the  
10 cell. One came in.

11 "Question: And this was -- now, do you  
12 know what the special operations group was?

13 "Answer: Yes, I do. That is known as  
14 SOG.

15 "Question: Were they dressed in the  
16 same or different ways than the regular Bayside  
17 Officers?

18 "Answer: They're all dressed  
19 differently, they're dressed in black.

20 "Question: Were these SOG officers  
21 that came to your cell, were they regular Bayside  
22 Officers?

23 "Answer: No, they were not.

24 "Question: Were they SOG officers?

25 "Answer: Yes, they were.



December 11, 2009

Page 9

1 "Question: All right. One of them  
2 came in and what did he do?

3 "Answer: He told me to sit on my bunk  
4 and put shackles on my legs. He said, you didn't  
5 comply. I said comply with what? He wouldn't give  
6 me an example or tell me what it was. He just said  
7 you didn't comply. Sit down and shut up. He put the  
8 shackles on.

9 "Question: Had you been given any kind  
10 of order or instructions that you think, as you look  
11 back, that you did not obey in some fashion? Or do  
12 you know what he was talking about?

13 "Answer: Not to my knowledge at all.  
14 I don't have any idea to this day what he was talking  
15 about.

16 "Question: Did you receive any kind of  
17 a disciplinary charge that day from anyone at  
18 Bayside?

19 "Answer: None at all.

20 "Question: How long were you shackled  
21 to the bed?

22 "Answer: A number of hours.

23 "Question: And did you suffer any kind  
24 of injury from that?

25 "Answer: Feet swollen, and they get



December 11, 2009

Page 10

1 numb sometimes."

2 That's his testimony on that event.

3 Like the supposed incident of being  
4 scratched by the dog in the gym, Mr. Isom's  
5 recounting of these events in his cell also has  
6 inherent elements of incredibility.

7 First, the SOG units were assigned  
8 basically for specific duties during the course of  
9 the lockdown. They were involved in the extraction  
10 of the inmates en masse from various units in order  
11 that those units could be searched. They  
12 occasionally assisted with showers and phone calls  
13 when called in to do so and when those opportunities  
14 resumed after the beginning of the lockdown.

15 They occasionally were called for  
16 individual extractions, usually to lockup, although  
17 that's a duty that they shared even during the  
18 lockdown with the Bayside Response Team. But there  
19 is no satisfactory explanation developed here, and  
20 the plaintiff does have the burden of proof, as to  
21 why a SOG unit would even have been in F Unit at this  
22 time and on this occasion, SOGs would have been let  
23 into his cell which we know requires a double locking  
24 technique, one at the podium and one at the door by a  
25 Bayside Officer, and why they would then shackle him



December 11, 2009

Page 11

1 to his bunk within the confines of a secure cell.

2 First, I do not find this recounting of  
3 the alleged event to have any indicia of credibility  
4 or reality at all.

5 Secondly, if indeed the shackles were  
6 placed upon his legs and even if they were tight to  
7 the extent of leading to impact on his feet, I do not  
8 find that this type of event, while bizarre and  
9 unexplained, constitutes either cruel or unusual  
10 punishment or the use of excessive force. At the  
11 most, it's an unnecessary imposition of additional  
12 security with a deminimis impact.

13 To summarize this, first, Mr. Isom has  
14 not established to the satisfaction of the Special  
15 Master that he sustained his burden of proof by a  
16 preponderance of the credible evidence that this  
17 event occurred at all.

18 But secondly, even if it did as he  
19 described it, it would not constitute an imposition  
20 of excessive force and/or punishment. Rather it is,  
21 at most, the modest enhancing of the restraints  
22 already in place upon Mr. Isom as a result of him  
23 being incarcerated in the secure cell.

24 Once again, at page 19, line six  
25 running through page 20 line 14 Mr. Isom testifies



December 11, 2009

Page 12

1 with regard to a random arrival, an intrusion by SOG  
2 officers on F Unit targeting in this case him and his  
3 bunk mate.

4 Beginning at line six on page 19.

5 "Question: And about how far into the  
6 lockdown did that happen, do you know?

7 "Answer: A few days.

8 "Question: And what happened, did some  
9 officers come in your cell?

10 "Answer: Yes, they did."

11 And this, by the way, is on a different  
12 occasion than the shackling that he had previously  
13 described.

14 Back up a little bit.

15 "Question: And what happened? Did  
16 some officers come in your cell?

17 "Answer: Yes, they did.

18 "Question: And where were you when  
19 they came into your cell?

20 "Answer: Under the bunk, where I was  
21 ordered to go.

22 "Question: They ordered you to go  
23 under the bed?

24 "Answer: Initially when he came to the  
25 door, they said you, on the bottom bunk. Get the



December 11, 2009

Page 13

1 fuck up under you. You in the top bunk, get down.  
2 Get on your knees, face the window with your hands on  
3 your head. After we complied, the door just slid  
4 open and they came in, jabbed me under the bunk, said  
5 you took too long. Slammed my cellie to the side of  
6 the wall. And had me come out, hit me in the head.

7 "Question: Hit you where?

8 "Answer: Right in the back of my head,  
9 left side.

10 "Question: What did they hit you with?

11 "Answer: The baton.

12 "Question: Was there bleeding or a cut  
13 or anything like that? Did you see any blood?

14 "Answer: No. Thank God, no. Just a  
15 lump. Just a lump and some pain.

16 "Question: And at the time that that  
17 happened, was there one or more than one guard in  
18 your cell?

19 "Answer: More than one.

20 "Question: Now, were these personnel,  
21 were they SOG officers or were they regular Bayside  
22 Officers?

23 "Answer: SOG officers."

24 Once again, a totally unexplained  
25 intrusion of SOG officers into a line of cells on F



December 11, 2009

Page 14

1 Unit, completely inconsistent with the duties that  
2 SOG was required to perform.

3 Now, I have found in other cases tried  
4 before me that there have been occasions when SOGs  
5 have come in unannounced essentially for, I believe I  
6 may have characterized them from time to time, as  
7 recreational assaults on inmates. But this is not  
8 one of those incidents. I find that the inherent  
9 incredibility of Mr. Isom's testimony with regard to  
10 the other alleged incidents, which he mentioned and  
11 which I've described above, clouds the credibility of  
12 his description of this alleged event in his cell as  
13 well.

14 Furthermore, if there was an entry into  
15 the cell, some of the description about making him on  
16 the lower bunk go under his bunk and being prodded by  
17 a stick if the officers were not satisfied that he  
18 was far enough under his bunk or had moved promptly,  
19 is consistent with that type of conduct involving  
20 other inmates on occasions when there was a  
21 reasonable explanation for SOG even to be in the  
22 cells at all. However, such prodding would not  
23 constitute the infliction of excessive force or cruel  
24 and unusual punishment as defined in the jury  
25 instructions which govern this matter.



December 11, 2009

Page 15

1           Maybe mindful of that, Mr. Isom on  
2 continuing this part of the story, talks about him  
3 being struck in the head, also with a night stick, by  
4 the SOG officer upon his exiting from the space  
5 underneath his bunk. I find once again this alleged  
6 incident is a fabrication.

7           Mr. Isom testifies finally to a fourth  
8 incident involving SOG officers relating to the  
9 shower and I do find that it is reasonable to  
10 conclude that SOG officers would have been brought in  
11 to assist in the taking of showers to which inmates  
12 during the lockdown were now being escorted, unlike  
13 the circumstances when no lockdown was in place.

14           He describes how he was taken down to  
15 the shower, and then the testimony picks up at page  
16 21, line 18.

17           "Question: All right. So you're  
18 dragged down to the shower. Did you get to go into  
19 the shower?

20           "Answer: Yes, I did.

21           "Question: And then what happened  
22 after that?

23           "Answer: After taking a shower, I came  
24 back out the door, I'm waiting to be escorted back,  
25 and he said go ahead. But when I looked down the



December 11, 2009

Page 16

1 hallway, there is a number of officers down the  
2 hallway, so I looked back at him, I figured he's  
3 going to walk me down. He said no, no, no. Go  
4 ahead. Go ahead.

5 "Question: They walked you to the  
6 shower, but you were not escorted back?

7 "Answer: No, I wasn't escorted back.

8 "Question: What happened on the way  
9 back?

10 "Answer: On the way back the officers,  
11 each and every one of them, took a swing at me. Some  
12 caught me, some didn't. Because as they swung at me,  
13 I started to run.

14 "Question: What were they swinging at  
15 you with, their fists or clubs?

16 "Answer: Batons and feet.

17 "Question: Did anything make an impact  
18 on you, did you get struck?

19 "Answer: Head, back, shoulders and  
20 legs.

21 "Question: Were you able to maintain  
22 your footing and keep going?

23 "Answer: Yes, I was.

24 "Question: Did you check your body  
25 later to see whether you had any bruises?



December 11, 2009

Page 17

1 "Answer: Yes, I did. Some bruises,  
2 some swelling, nothing broken."

3 Once again, I find this recounting of  
4 this story not to be credible. Whether or not he was  
5 escorted directly back to his cell by a SOG officer  
6 after completion of the shower, it is inherently  
7 incredible that, for an event such as a shower  
8 detail, a gauntlet of SOG officers would be set up  
9 along the hallway to inflict this type of punishment  
10 on Mr. Isom as he made his way back to his cell.

11 First, this type of conduct would be  
12 completely visible by inmates from other cells. I  
13 find, frankly, that the SOG units would not run this  
14 risk.

15 Secondly, the Bayside housing officers  
16 certainly have a stake in the orderly running of the  
17 units assigned to them and in minimizing incidents  
18 that could prove to be provocative. Bayside Officers  
19 had a significant level of control, even though  
20 assisted by SOG, with regard to showering.  
21 Particularly because it was Bayside Officers who  
22 controlled the locking and unlocking of the cells in  
23 question.

24 Finally, given what I have already  
25 determined to be the fabrication by Mr. Isom of the



December 11, 2009

Page 18

1 other incidents that allegedly occurred to him, I  
2 find for this additional reason that his testimony  
3 about being beaten while running a gauntlet of SOG  
4 officers back to his cell after taking a shower has  
5 not been supported by a preponderance of the credible  
6 evidence.

7 Accordingly, in all respects with  
8 regard to the incidents about which he has testified,  
9 both individually and collectively, Mr. Isom has not  
10 maintained that burden of proof and has thus failed  
11 to sustain his claims before me.

12 Finally, although not every item of  
13 evidence has been discussed in this opinion/report,  
14 all evidence presented to the Special Master was  
15 reviewed and considered. For the reasons set forth  
16 above, I recommend in this report that the District  
17 Court enter an order and judgment of no cause for  
18 action with regard to Laurence Isom.



December 11, 2009

Page 19

## C E R T I F I C A T E

I, Theresa O. Mastroianni, a Notary Public and Certified Shorthand Reporter of the State of New Jersey, do hereby certify that the foregoing is a true and accurate transcript of the testimony as taken stenographically by and before me at the time, place, and on the date hereinbefore set forth.

I DO FURTHER CERTIFY that I am neither a relative nor employee nor attorney nor counsel of any of the parties to this action, and that I am neither a relative nor employee of such attorney or counsel, and that I am not financially interested in the action.



Theresa O. Mastroianni, C.S.R.  
Notary Public, State of New Jersey  
My Commission Expires May 5, 2010  
Certificate No. XIO857  
Date: December 15, 2009



<b>A</b>	10:7 17:17	<b>bottom</b> 12:25	<b>circumstances</b>	<b>credibility</b> 11:3
<b>able</b> 16:21	<b>assist</b> 15:11	<b>broken</b> 17:2	6:23 15:13	14:11
<b>Abu</b> 6:6 7:5,15	<b>assisted</b> 10:12	<b>brought</b> 4:2	<b>Civil</b> 1:2 4:14	<b>credible</b> 11:16
<b>accurate</b> 19:6	17:20	15:10	<b>claims</b> 18:11	17:4 18:5
<b>accurately</b> 6:24	<b>attack</b> 6:15,17	<b>bruises</b> 16:25	<b>close</b> 5:17,17 7:2	<b>cruel</b> 7:11 11:9
<b>act</b> 7:10	6:17	17:1	<b>clouds</b> 14:11	14:23
<b>action</b> 1:2 4:2	<b>attorney</b> 19:10	<b>bunk</b> 8:5 9:3	<b>clubs</b> 16:15	<b>curious</b> 6:1
18:18 19:11,14	19:12	11:1 12:3,20	<b>collectively</b> 18:9	<b>cut</b> 13:12
<b>activities</b> 6:11	<b>ATTORNEYS</b>	12:25 13:1,4	<b>come</b> 5:5 6:5	<b>C.S.R</b> 19:19
<b>additional</b> 11:11	3:8,14	14:16,16,18	7:24 12:9,16	
18:2	<b>Audubon</b> 2:22	15:5	13:6 14:5	<b>D</b>
<b>adds</b> 6:1		<b>burden</b> 10:20	<b>coming</b> 5:22	<b>D</b> 3:6
<b>Agreement</b> 4:7	<b>B</b>	11:15 18:10	<b>command</b> 6:16	<b>danger</b> 6:20
<b>ahead</b> 15:25	<b>back</b> 5:4,18 6:12		<b>commencing</b>	<b>date</b> 19:8,21
16:4,4	6:25 9:11	<b>C</b>	2:10	<b>day</b> 7:24 9:14,17
<b>al</b> 1:9	12:14 13:8	<b>C</b> 3:2 19:1,1	<b>comment</b> 7:16	<b>days</b> 12:7
<b>allegation</b> 7:17	15:24,24 16:2	<b>case</b> 5:4	<b>Commission</b>	<b>December</b> 1:15
<b>allegations</b> 4:11	16:6,7,9,10,19	<b>called</b> 10:13,15	19:20	19:21
7:20	17:5,10 18:4	<b>calls</b> 10:12	<b>completely</b> 14:1	<b>decision</b> 4:8
<b>alleged</b> 11:3	<b>Baker</b> 4:19	<b>Camden</b> 2:10	17:12	<b>Defendants</b> 1:10
14:10,12 15:5	<b>barked</b> 7:2	3:7	<b>completion</b> 17:6	3:14
<b>allegedly</b> 18:1	<b>based</b> 4:9	<b>case</b> 7:13 12:2	<b>complied</b> 13:3	<b>defined</b> 14:24
<b>allowed</b> 6:25	<b>basically</b> 10:8	<b>cases</b> 14:3	<b>comply</b> 9:5,5,7	<b>deminimis</b> 11:12
<b>and/or</b> 11:20	<b>baton</b> 13:11	<b>caught</b> 16:12	<b>conclude</b> 7:8	<b>demonstrated</b>
<b>Answer</b> 5:15,22	<b>Batons</b> 16:16	<b>cause</b> 18:17	15:10	7:15
5:25 8:3,5,9,13	<b>Bayside</b> 1:5 4:18	<b>cell</b> 8:1,8,10,21	<b>conclusion</b> 7:14	<b>described</b> 5:2
8:18,23,25 9:3	8:16,21 9:18	10:5,23 11:1	<b>conduct</b> 14:19	11:19 12:13
9:13,19,22,25	10:18,25 13:21	11:23 12:9,16	17:11	14:11
12:7,10,17,20	17:15,18,21	12:19 13:18	<b>confines</b> 11:1	<b>describes</b> 15:14
12:24 13:8,11	<b>beaten</b> 18:3	14:12,15 17:5	<b>considered</b> 6:8	<b>description</b> 6:11
13:14,19,23	<b>bed</b> 9:21 12:23	17:10 18:4	18:15	14:12,15
15:20,23 16:7	<b>beginning</b> 4:25	<b>cellie</b> 13:5	<b>consistent</b> 14:19	<b>detail</b> 17:8
16:10,16,19,23	5:10 6:2 10:14	<b>cells</b> 13:25 14:22	<b>constitute</b> 4:14	<b>determined</b>
17:1	12:4	17:12,22	11:19 14:23	17:25
<b>appear</b> 7:6	<b>begins</b> 7:21	<b>certainly</b> 17:16	<b>constitutes</b> 11:9	<b>developed</b> 10:19
<b>applicable</b> 4:11	<b>believe</b> 14:5	<b>Certificate</b>	<b>contact</b> 7:4	<b>different</b> 8:16
<b>applied</b> 4:8	<b>Bissell</b> 1:21 4:1	19:21	<b>continuing</b> 15:2	12:11
<b>apprehending</b>	6:5	<b>Certified</b> 2:6,20	<b>control</b> 7:3	<b>differently</b> 8:19
6:19	<b>bit</b> 5:25 12:14	19:4	17:19	<b>directives</b> 4:5
<b>area</b> 5:4	<b>bite</b> 5:17 6:17	<b>certify</b> 19:5,9	<b>controlled</b> 17:22	<b>directly</b> 17:5
<b>arrival</b> 12:1	<b>bitten</b> 5:24	<b>characterized</b>	<b>Convention</b> 6:8	<b>disciplinary</b>
<b>assault</b> 7:18,20	<b>bizarre</b> 11:8	14:6	<b>correct</b> 8:3	9:17
<b>assaulted</b> 4:24	<b>black</b> 8:19	<b>charge</b> 9:17	<b>counsel</b> 19:10,12	<b>discussed</b> 18:13
<b>assaults</b> 14:7	<b>bleeding</b> 13:12	<b>charges</b> 4:10	<b>course</b> 6:16 10:8	<b>District</b> 1:1,2 2:9
<b>assigned</b> 4:19	<b>blood</b> 13:13	<b>charitable</b> 6:12	<b>Court</b> 1:1 2:7,9	18:16
	<b>body</b> 16:24	<b>check</b> 16:24	2:20 18:17	<b>docket</b> 4:3



dog 5:20,20,22 6:6 7:1,9 10:4 dogs 5:12,13 6:14,24 dog's 6:11 door 4:21 10:24 12:25 13:3 15:24 double 10:23 dragged 15:18 dressed 8:15,18 8:19 duties 10:8 14:1 duty 10:17	18:6,13,14 example 5:13 9:6 excessive 11:10 11:20 14:23 exercise 5:5 exiting 15:4 Expires 19:20 explanation 10:19 14:21 exposed 7:6 extent 4:11 11:7 extraction 4:25 7:18 10:9 extractions 10:16	fists 16:15 following 5:9 follows 7:22 footing 16:22 force 11:10,20 14:23 forced 6:7 foregoing 19:5 FORMAROLI 2:19 forth 4:9 18:15 19:8 forward 5:19 7:24 found 14:3 fourth 15:7 frame 7:21 frankly 6:18 17:13 FRIDAY 1:15 fuck 13:1 FURTHER 19:9 Furthermore 14:14	guard 13:17 guiding 4:7 gym 5:3,4 6:12 7:1,19,19 10:4 gymnasium 5:1	incident 6:6 10:3 15:6,8 incidents 14:8 14:10 17:17 18:1,8 inconsistent 14:1 incredibility 10:6 14:9 incredible 17:7 indicia 11:3 individual 10:16 individually 18:9 inflict 17:9 infliction 14:23 inherent 10:6 14:8 inherently 17:6 Initially 12:24 injuries 4:22 injury 9:24 inmate 7:3 inmates 10:10 14:7,20 15:11 17:12 instructions 4:10 9:10 14:25 interaction 8:1 interested 19:13 interior 4:20 intimidation 7:3 7:9 intrusion 12:1 13:25 involved 6:19 10:9 involving 14:19 15:8 Isom 1:7 4:2,12 4:17,23 5:6 6:24 7:6 11:13 11:22,25 15:1 15:7 17:10,25 18:9,18
<b>E</b> E 3:2,2 19:1,1 either 11:9 element 6:20 elements 10:6 employee 19:10 19:12 employment 7:9 en 10:10 enforced 7:14 enhancing 11:21 ensued 7:10 enter 18:17 entry 14:14 equipment 5:6 escorted 15:12 15:24 16:6,7 17:5 ESQUIRE 3:5 3:11,12 ESQUIRES 3:4 essentially 14:5 established 11:14 et 1:9 event 10:2 11:3 11:8,17 14:12 17:7 events 7:18 10:5 eventually 4:21 evidence 11:16	<b>F</b> F 4:17,18,20,25 5:1 8:1 10:21 12:2 13:25 19:1 fabrication 15:6 17:25 face 5:15 13:2 facts 4:8 failed 18:10 far 12:5 14:18 fashion 9:11 FAUVER 1:9 feet 9:25 11:7 16:16 fell 4:21 figured 16:2 finalized 4:13 finally 15:7 17:24 18:12 financially 19:13 find 6:10,23 7:13 11:2,8 14:8 15:5,9 17:3,13 18:2 first 6:10 8:7 10:7 11:2,13 17:11	<b>G</b> gauntlet 17:8 18:3 Geneva 6:8 Gerry 2:9 Ghraib 6:6 7:5 7:15 give 9:5 given 9:9 17:24 go 6:18 7:23 12:21,22 14:16 15:18,25 16:3 16:4 God 13:14 going 6:3 16:3 16:22 govern 14:25 gratuitously 6:2 gravamen 7:12 GRIEGEL 3:10 group 8:12	<b>H</b> H 1:9 hallway 16:1,2 17:9 HAMILTON 3:13 handled 6:15 handler 6:7 handlers 6:14 hands 13:2 happen 12:6 happened 5:12 5:13 8:6 12:8 12:15 13:17 15:21 16:8 head 13:3,6,8 15:3 16:19 hereinbefore 19:8 HIGHWAY 3:12 hit 13:6,7,10 HONORABLE 1:21 Horse 2:21 hours 9:22 House 2:9 housed 4:17 houses 5:5 housing 17:15	<b>I</b> idea 9:14 impact 11:7,12 16:17 imposition 7:11 11:11,19 inaccurate 6:12 incarcerated 11:23



<b>Isom's</b> 7:15 10:4 14:9 <b>issued</b> 4:4 <b>item</b> 18:12 <hr/> <b>J</b> <hr/> <b>jabbed</b> 13:4 <b>Jersey</b> 1:2 2:8,10 2:22 3:7,13 19:5,20 <b>JOHN</b> 1:21 <b>Judge</b> 4:1 6:5 <b>judgment</b> 18:17 <b>July</b> 4:18 <b>jury</b> 4:9,10 14:24 <b>JUSTIN</b> 3:5 <hr/> <b>K</b> <hr/> <b>keep</b> 16:22 <b>KENNETH</b> 3:12 <b>kept</b> 6:21 <b>kind</b> 9:9,16,23 <b>knees</b> 13:2 <b>know</b> 8:12 9:12 10:23 12:6 <b>knowledge</b> 9:13 <b>known</b> 8:13 <hr/> <b>L</b> <hr/> <b>latch</b> 6:18 <b>Laurence</b> 1:7 4:2 18:18 <b>law</b> 4:7 <b>LAWRENCE</b> 3:6 <b>LAZZARO</b> 3:10 <b>leading</b> 11:7 <b>learn</b> 5:5 <b>leash</b> 6:21 <b>left</b> 13:9 <b>legs</b> 5:16,23 6:25 9:4 11:6 16:20 <b>level</b> 17:19 <b>license</b> 2:7 <b>LINDSAY</b> 3:4,6	<b>line</b> 5:10 7:21 11:24,25 12:4 13:25 15:16 <b>lines</b> 6:3 <b>Litigation</b> 1:6 <b>little</b> 12:14 <b>Local</b> 4:13 <b>lockdown</b> 10:9 10:14,18 12:6 15:12,13 <b>locking</b> 10:23 17:22 <b>lockup</b> 10:16 <b>long</b> 9:20 13:5 <b>look</b> 9:10 <b>looked</b> 15:25 16:2 <b>Loughry</b> 3:4,5 6:4 <b>lower</b> 14:16 <b>LOZIER</b> 3:10 3:12 <b>lump</b> 13:15,15 <hr/> <b>M</b> <hr/> <b>maintain</b> 16:21 <b>maintained</b> 18:10 <b>making</b> 14:15 <b>manner</b> 6:14 <b>march</b> 7:18 <b>MARK</b> 3:11 <b>MARKET</b> 3:6 <b>masse</b> 10:10 <b>Master</b> 1:6,21 4:6,16 7:8 11:15 18:14 <b>Master's</b> 4:6 <b>Mastroianni</b> 2:6 2:19 19:3,19 <b>mate</b> 12:3 <b>matter</b> 1:4 2:6 14:25 <b>means</b> 6:18 7:2 <b>Mejias</b> 4:10 <b>mentioned</b> 14:10	<b>mindful</b> 15:1 <b>minimizing</b> 17:17 <b>modest</b> 11:21 <b>motivation</b> 7:15 <b>motive</b> 7:6 <b>move</b> 5:18 <b>moved</b> 14:18 <hr/> <b>N</b> <hr/> <b>N</b> 3:2 <b>neither</b> 19:9,11 <b>neutralizing</b> 6:19 <b>New</b> 1:2 2:8,10 2:22 3:7,13 19:4,20 <b>night</b> 15:3 <b>Notary</b> 2:8 19:3 19:20 <b>November</b> 5:9 <b>numb</b> 10:1 <b>number</b> 2:7 4:3 9:22 16:1 <hr/> <b>O</b> <hr/> <b>O</b> 2:6 19:3,19 <b>obey</b> 9:11 <b>object</b> 6:17 <b>occasion</b> 10:22 12:12 <b>occasionally</b> 10:12,15 <b>occasions</b> 4:24 14:4,20 <b>occupants</b> 4:25 <b>occurred</b> 11:17 18:1 <b>officer</b> 4:19 7:25 8:7 10:25 15:4 17:5 <b>officers</b> 7:25 8:7 8:17,20,22,24 12:2,9,16 13:21,22,23,25 14:17 15:8,10	16:1,10 17:8 17:15,18,21 18:4 <b>Okay</b> 5:11 <b>once</b> 7:2 11:24 13:24 15:5 17:3 <b>open</b> 13:4 <b>operations</b> 8:12 <b>opinion/report</b> 1:5 4:4 18:13 <b>opportunities</b> 10:13 <b>order</b> 4:5,16 9:10 10:10 18:17 <b>ordered</b> 12:21 12:22 <b>orderly</b> 17:16 <b>outside</b> 4:21 8:9 <hr/> <b>P</b> <hr/> <b>P</b> 3:2,2 <b>page</b> 5:8 6:2 7:21 11:24,25 12:4 15:15 <b>pain</b> 13:15 <b>paragraph</b> 4:15 <b>part</b> 15:2 <b>Particularly</b> 17:21 <b>particulars</b> 4:24 <b>parties</b> 19:11 <b>paws</b> 5:16,23 <b>PC</b> 3:10 <b>perform</b> 14:2 <b>person</b> 6:19,21 <b>personnel</b> 13:20 <b>phone</b> 10:12 <b>physical</b> 7:4 <b>picks</b> 15:15 <b>Pike</b> 2:21 <b>place</b> 6:10 11:22 15:13 19:8 <b>placed</b> 11:6 <b>plaintiff</b> 10:20	<b>PLAINTIFFS</b> 3:8 <b>Plaza</b> 2:9 <b>PM</b> 2:10 <b>podium</b> 10:24 <b>point</b> 5:3 7:25 <b>posed</b> 6:20 <b>positions</b> 5:3 <b>preponderance</b> 11:16 18:5 <b>presented</b> 18:14 <b>previously</b> 12:12 <b>principles</b> 4:7 <b>Prison</b> 1:5 4:18 <b>proceedings</b> 2:5 4:2 6:13 <b>prodded</b> 14:16 <b>prodding</b> 14:22 <b>promptly</b> 14:18 <b>proof</b> 10:20 11:15 18:10 <b>prove</b> 17:18 <b>provocative</b> 17:18 <b>Public</b> 2:8 19:3 19:20 <b>punishment</b> 7:12 11:10,20 14:24 17:9 <b>pursuant</b> 4:5 <b>pushed</b> 5:19 <b>put</b> 9:4,7 <hr/> <b>Q</b> <hr/> <b>question</b> 5:11,21 5:24 7:21,23 8:4,6,11,15,20 8:24 9:1,9,16 9:20,23 12:5,8 12:15,18,22 13:7,10,12,16 13:20 15:17,21 16:5,8,14,17 16:21,24 17:23 <hr/> <b>R</b>
---	---	--	---	---



<b>R</b> 3:2 19:1 <b>random</b> 12:1 <b>reality</b> 11:4 <b>reason</b> 18:2 <b>reasonable</b> 14:21 15:9 <b>reasons</b> 18:15 <b>receive</b> 9:16 <b>recommend</b> 18:16 <b>recounting</b> 10:5 11:2 17:3 <b>recreational</b> 14:7 <b>reference</b> 4:5,16 7:5 <b>regard</b> 1:4 12:1 14:9 17:20 18:8,18 <b>regular</b> 8:16,21 13:21 <b>relating</b> 15:8 <b>relative</b> 19:10,12 <b>reminder</b> 7:7 <b>reopening</b> 4:1 <b>report</b> 4:15 18:16 <b>Reporter</b> 2:7 19:4 <b>Reporting</b> 2:20 <b>required</b> 4:15 14:2 <b>requires</b> 10:23 <b>respects</b> 18:7 <b>Response</b> 10:18 <b>restrained</b> 6:22 <b>restraints</b> 11:21 <b>result</b> 11:22 <b>resumed</b> 10:14 <b>return</b> 7:19 <b>review</b> 4:13 <b>reviewed</b> 18:15 <b>right</b> 9:1 13:8 15:17 <b>risk</b> 17:14 <b>ROSELLI</b> 3:10	3:11 <b>Rule</b> 4:14 <b>run</b> 16:13 17:13 <b>running</b> 11:25 17:16 18:3 <hr/> <b>S</b> <hr/> <b>S</b> 3:2 <b>satisfaction</b> 11:14 <b>satisfactory</b> 10:19 <b>satisfied</b> 14:17 <b>scratch</b> 6:25 <b>scratched</b> 5:16 10:4 <b>scratching</b> 5:23 7:10 <b>search</b> 5:1 <b>searched</b> 10:11 <b>second</b> 7:17 <b>secondly</b> 11:5,18 17:15 <b>secure</b> 11:1,23 <b>security</b> 11:12 <b>see</b> 13:13 16:25 <b>set</b> 4:9 17:8 18:15 19:8 <b>seven</b> 4:15 5:10 <b>shackle</b> 10:25 <b>shackled</b> 8:5 9:20 <b>shackles</b> 9:4,8 11:5 <b>shackling</b> 12:12 <b>shared</b> 10:17 <b>Shorthand</b> 19:4 <b>shoulders</b> 16:19 <b>shower</b> 15:9,15 15:18,19,23 16:6 17:6,7 18:4 <b>showering</b> 17:20 <b>showers</b> 10:12 15:11 <b>shut</b> 9:7	<b>sicced</b> 5:12 <b>side</b> 13:5,9 <b>significant</b> 17:19 <b>sit</b> 9:3,7 <b>sitting</b> 5:2 <b>six</b> 11:24 12:4 <b>Slammed</b> 13:5 <b>slid</b> 13:3 <b>snapped</b> 5:15 <b>SOG</b> 5:3 7:25 8:14,20,24 10:7,21 12:1 13:21,23,25 14:2,21 15:4,8 15:10 17:5,8 17:13,20 18:3 <b>SOGs</b> 10:22 14:4 <b>sorry</b> 5:21 <b>sort</b> 6:7 <b>South</b> 2:21 <b>space</b> 15:4 <b>special</b> 1:6,21 4:6,6,16 7:8 8:12 11:14 18:14 <b>specific</b> 10:8 <b>SQUARE</b> 3:13 <b>stabbed</b> 4:20 <b>staggered</b> 4:20 <b>stake</b> 17:16 <b>started</b> 16:13 <b>State</b> 1:5 2:8 3:12 4:18 19:4 19:20 <b>statement</b> 6:1 <b>States</b> 1:1 2:9 <b>stay</b> 7:19 <b>stenographica...</b> 19:7 <b>stick</b> 14:17 15:3 <b>story</b> 15:2 17:4 <b>STREET</b> 3:6 <b>struck</b> 15:3 16:18 <b>succumbed</b> 4:21	<b>suffer</b> 9:23 <b>summarize</b> 11:13 <b>supported</b> 18:5 <b>supposed</b> 10:3 <b>sustain</b> 18:11 <b>sustained</b> 11:15 <b>swelling</b> 17:2 <b>swing</b> 16:11 <b>swinging</b> 16:14 <b>switched</b> 5:3 <b>swollen</b> 9:25 <b>swung</b> 16:12 <hr/> <b>T</b> <hr/> <b>T</b> 3:5 19:1,1 <b>taken</b> 2:6 6:7 15:14 19:7 <b>talking</b> 9:12,14 <b>talks</b> 15:2 <b>targeting</b> 12:2 <b>Team</b> 10:18 <b>technique</b> 10:24 <b>tell</b> 5:12 9:6 <b>testified</b> 4:23 5:6 7:17 18:8 <b>testifies</b> 5:8 11:25 15:7 <b>testify</b> 6:24 <b>testimony</b> 5:9 6:2,13 7:7,13 10:2 14:9 15:15 18:2 19:6 <b>Thank</b> 13:14 <b>Theresa</b> 2:6 19:3 19:19 <b>think</b> 9:10 <b>three</b> 8:8,9 <b>tight</b> 11:6 <b>time</b> 5:19 7:21 7:24 8:7 10:22 13:16 14:6,6 19:7 <b>told</b> 9:3 <b>top</b> 13:1	<b>torture</b> 6:9 7:11 <b>totally</b> 13:24 <b>trained</b> 6:15,16 <b>transcript</b> 2:5 4:14 19:6 <b>tried</b> 5:19 14:3 <b>true</b> 19:6 <b>two</b> 7:24 8:8 <b>type</b> 11:8 14:19 17:9,11 <hr/> <b>U</b> <hr/> <b>unannounced</b> 14:5 <b>underlie</b> 4:8 <b>underneath</b> 15:5 <b>understand</b> 6:5 <b>unexplained</b> 11:9 13:24 <b>unit</b> 4:17,18,19 4:20,21 5:1,1 8:1 10:21,21 12:2 14:1 <b>United</b> 1:1 2:9 <b>units</b> 10:7,10,11 17:13,17 <b>unlocking</b> 17:22 <b>unnecessary</b> 11:11 <b>untrue</b> 7:13 <b>unusual</b> 7:12 11:9 14:24 <b>use</b> 11:10 <b>usually</b> 10:16 <hr/> <b>V</b> <hr/> <b>various</b> 4:24 10:10 <b>Videoconfere...</b> 2:20 <b>visible</b> 17:12 <b>vs</b> 1:8 <hr/> <b>W</b> <hr/> <b>W</b> 1:21 3:12 <b>waiting</b> 15:24
--	--	--	---	--



December 11, 2009

24

walk 16:3	251 2:21			
walked 16:5				
Walker 4:10	3			
wall 13:6	30th 4:18			
want 7:23	30X100085700			
wasn't 16:7	2:7			
way 6:8 12:11	31 6:2			
16:8,10 17:10	33 3:12			
ways 8:16	330 3:6			
weight 5:6				
White 2:21	5			
WILLIAM 1:9	5 19:20			
window 13:2	52.1 4:14			
witness 6:4				
wouldn't 9:5	6			
written 4:15	609-586-2257			
	3:13			
X				
XIO857 19:21	8			
	856-546-1100			
0	2:23			
08-5579 1:2 4:3	856-968-9201			
08102 2:10 3:7	3:7			
08106 2:22				
08690 3:13				
1				
11 1:15				
12:25 2:10				
1337 3:12				
14 11:25				
15 19:21				
16 5:8 7:21				
18 15:16				
19 11:24 12:4				
1997 4:18				
2				
20 6:3 11:25				
20th 5:9				
2008 5:9				
2009 1:15 19:21				
2010 19:20				
21 15:16				
24 7:21				
25 6:3				